

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall  
15C Springfield Road  
New Lisbon, New Jersey  
January 5, 2009 - 9:30 a.m.

**MINUTES**

**MEMBERS IN ATTENDANCE:** Acting Chairman Norman Tomasello, Candace Ashmun, Leslie Ficcaglia, Stephen Lee, Ed Lloyd, John Haas (1<sup>st</sup> Alternate), and Daniel M. Kennedy (3<sup>rd</sup> Alternate)

**MEMBERS ABSENT:** Robert W. McIntosh

**STAFF PRESENT:** John Stokes, Stacey Roth, Susan Grogan, Paul Leakan, Robert Zampella, Nick Procopio, Ed Wengrowski, and Betsy Piner

Acting Chairman Tomasello called the meeting to order at 9:40 a.m. and wished everyone a Happy New Year. Mr. Stokes announced that the sequence of the agenda would be altered from that originally posted and item numbers 3 & 4 would be reversed.

**1. Adoption of minutes from the December 1, 2008 CMP Policy and Implementation Committee meeting**

Commissioner Ashmun moved the adoption of the minutes of the December 1, 2008 meeting. Commissioner Ficcaglia seconded and all were in favor.

**2. Executive Director's Report**

**Stafford Township's 2007 Master Plan and Ordinances 2007-98, 2007-99, 2007-107, 2007-120, 2008-88 and 2008-89, amending Chapters 130 (Land Use and Development) and 211 (Zoning) of the Township's Code by adopting revised zoning maps, revising permitted uses and implementing the Township's petition for plan endorsement for that portion of the municipality located in the Pinelands National Reserve but outside the Pinelands Area**

Mr. Stokes noted the presence today of Stafford Township Mayor Carl Block and Township Administrator, Mr. Paul Shives.

Ms. Grogan said that Stafford had adopted a new Master Plan in 2007 and a number of implementing ordinances including two zoning maps, one superseding the other. From the perspective of the Pinelands Commission, the issues of greatest interest are primarily zoning changes within the RGA, FA and PA and a small change from FA to PV. In addition there are changes to permitted and conditional uses in a number of districts within the RGA. Finally, Stafford has implemented Plan Endorsement and is one of three municipalities (Ocean and Upper being the other two) to recently request Pinelands certification of their PNR zoning.

Ms. Grogan reviewed the zoning changes as detailed in the report. She said that Zoning Map changes in the FA and PA reflect state (S), county (CO) and municipal (ML) land ownership. In the RGA, a change has been made to reflect the location of the previously certified Stafford Business Park Redevelopment Area. There are some small changes within and between RGA commercial and residential zones but the most significant change is that from the residential R-4 Zone and the commercial CC Zone to the Preservation Zone. The P zone is not a typical zone within the RGA but Stafford has had this designation since its original certification and it incorporates many of the environmentally sensitive areas within the RGA. This zoning change still permits some limited residential zoning (one unit per 8 acres), with a new provision for clustering and a slight density increase through the use of PDCs. This is relevant because a significant amount of privately owned land has been rezoned, the largest being an 86 acre parcel from the R-4 to the P zone. The R-4 zone previously allowed single family dwellings on 10,000 sq.-ft lots and planned retirement development at a base density of 3 du/ac. (increasing to 6 du/ac. with the use of PDCs). Of the 86 acres, approximately 60 acres is wetlands so there is still an opportunity for some limited amount of development. Ms. Grogan said that, at the public hearing, the property owners attended and indicated that they are contemplating a development application. There is an LOI pending for the delineation of wetlands buffers.

Ms. Grogan described a number of other changes noting that the Township is trying to focus remaining development potential and direct it to appropriate locations away from sensitive lands. The PDC component in mixed use and planned unit development projects is at 30% of the market rate units, identical to that used for the Stafford Business Park. The Commission appreciates the fact that PDC use is thus guaranteed should such projects be realized. Although PDCs were permitted previously in the R-4 Zone, their use was unlikely due to the environmental constraints.

Ms. Grogan said that staff believes that Stafford's amended zoning plan is consistent with CMP standards and is recommending certification.

Commissioner Lee asked about the concerns of and provision of "justice" to the property owner. Ms. Grogan responded that such questions might best be addressed by the Township. However, directing the Committee to Exhibit # 2, the map excerpted from the 2007 Master Plan, she identified the subject parcel as #3 and said that the parcel is flanked by high density development on either side. She identified the wetlands line in blue and said that along this portion of Route 72, there is RGA on the North side of the road and FA on the South. She noted that an additional 5 acres currently in the CC (Community Commercial) Zone, in addition to the 86 acres in the R-4 Zone, are owned by the subject property owner and being proposed for the P Zone.

Mayor Block said that originally this entire area had been in common ownership and that the vacant area had once been part of the Fawn Lakes project. He said that to the east is Atlantic Hills. He said that the lake and streambed had become an environmental issue. He said that as part of its smart growth application, the Township had addressed the entire municipality. He said that since there had been no development applications before the Township on this parcel, it seemed the appropriate time to rezone to reduce the permitted density.

In response to Commissioner Lee's question regarding development potential of the property, Mayor Block said that there are two small portions at the front of the parcel and a small isolated parcel to the rear which seemed appropriate for development. Commission staff had requested the

Township amend a previous ordinance to allow some limited residential development to continue to be permitted in the P Zone.

In response to a question from Commissioner Lee regarding the number of potential units prior to vs. after the proposed rezoning, Ms. Grogan said that if one assumed the lands in question were to be developed as a planned retirement community, the rezoning from R-4 and CC to P would result in a theoretical reduction in zoning capacity of 494 units. Taking into account the environmental constraints of the property and the minimum lot size requirements applied to planned retirement communities by Stafford's land use ordinances, the actual reduction in zoning capacity would be much less, only 215 units.

Mr. Stokes said that the report notes that the property owner has indicated plans for 68 units.

Ms. Grogan said that the Commission has only an LOI application for wetlands delineation for a 10 unit project. Staff learned of the 68 unit project at the public hearing but no application has been received.

Commissioner Lloyd asked if the ten units were to be built on the entire property or on a portion.

Mr. Stokes noted the presence of some representatives of the property owner and cautioned that although the hearing record was closed, he did not feel that some clarification of the Committee's questions would be harmful to the record.

Mr. James Rhatican, representing Beachwood LLC, introduced his associate, Mr. Keith Smith with Parrello Associates. Mr. Rhatican said that the application had been made requesting wetlands delineation for a 10 unit project.

Mr. Smith said that although the LOI application had shown no plan for the location of the units, the interest was in developing both upland locations. Ms. Grogan noted that a concept plan had been included in the packet (Tab 3 of Exhibit #4).

Mr. Rhatican said that the proposed development sites are all uplands; the projects would not disturb wetlands. The site is fully served by a public water supply, sewer and a gas main.

Mr. Stokes confirmed Commissioner Ashmun's statement that there was no development application pending before the Township or the Commission.

In response to a question from Commissioner Kennedy as to what accounted for the delay in the issuing of the LOI, Mr. Rhatican stated that it had been issued on December 31, 2008.

Ms. Grogan continued with her presentation, focusing on the revisions to the PNR portion of Stafford, east of the Garden State Parkway and outside the Pinelands Area. Ms. Grogan said that the municipality is to be commended for successfully completing the plan endorsement process. She said that the Township had requested formal certification by the Commission and that among the proposals was a 700 acre reduction in the Stafford Regional Center, adjacent to the Pinelands Regional Growth Area, to designate these environmentally sensitive lands as Planning Area 5 (Environmentally Sensitive Planning Area) which corresponds to a Pinelands Forest Area

designation. Other smaller planning area changes are also proposed. She said that in order for NJ DEP to sign off officially on any State planning area changes or center boundaries in the PNR, a determination of consistency with the CMP must be made. The only way to do this is for the Commission to review and certify the master plan and implementing ordinances. The proposed management area changes in the PNR will appear on the land capability map as RGA, FA and RDA and staff has determined that the changes are consistent and recommend their certification.

Ms. Grogan noted that Mr. Rhatican had requested the opportunity to make a statement. Mr. Stokes responded that the Committee had received all the submitted documentation and that, should the Committee agree to hear from him, Mr. Rhatican's testimony today could not go beyond that submitted at the public hearing.

Commissioner Ashmun moved the recommendation for Commission certification of Stafford Township's 2007 Master Plan and Ordinances 2007-98, 2007-99, 2007-107, 2007-120, 2008-88 and 2008-89. Commissioner Haas seconded. Acting chairman Tomasello invited Mr. Rhatican to offer his comments.

Mr. Rhatican said that in addition to an appeal of the tax assessment, a lawsuit was pending against the municipality. He stated that Stafford was not concerned with individual property owners and the impact of this rezoning upon them. He noted that the downzoning of his client's land would lead to substantially less development than previously permitted and that the resulting density was inconsistent with CMP standards for Stafford's RGA.

Commissioner Lee said that as Stafford had benefitted from the Pinelands Infrastructure Trust Fund (PITF) and this rezoning was near an existing sewer and paved streets, he was not prepared to vote today and would abstain.

Mr. Stokes said that Ms. Grogan had advised him that the Commission must act at its January 2009 meeting unless Stafford requests an extension. Mr. Stokes said that with any rezoning there is the potential difficulty as to how individual property owners are affected. He stated that the Commission's obligation is to ensure that the zoning in the RGA results in reasonably achievable densities and that the overall residential capacity within the RGA meets the CMP. He said that he understood the property owners' concerns with density as it applies to their particular parcel but the municipal zoning plan *overall* must meet CMP density prescriptions, not each individual parcel. Mr. Stokes said that Ms. Grogan's review shows that, on balance, the municipality has met its test, that the CMP does not limit the municipality's ability to rezone and that staff recommends certification of these documents.

Chairman Tomasello called for the vote and all were in favor except Commissioner Lee who abstained.

### **3. Briefing on Electric Transmission Right-of-Way Plan**

Mr. Stokes said that several years ago, when the Commission entered into an agreement with the Board of Public Utilities for the electric transmission lines, the Commission established the Pinelands Conservation Fund. One of the first projects to be developed

was the comprehensive ecologically based plan for vegetation management for rights-of way (ROW). Dr. Richard Lathrop (Rutgers University) was contracted to develop the plan which is now being reviewed by the utilities companies. Today he will discuss the plan with the Committee so that discussion can begin as to how to proceed with implementing the recommendations.

Dr. Lathrop provided a PowerPoint presentation (*Attachment A*) and noted the overall goals of the project, that of creating a ROW maintenance plan that creates and maintains relatively stable and sustainable early successional Pinelands habitats that reflect general Pinelands characteristics. He said that Atlantic City Electric Co. (ACE), Jersey Central Power and Light Co. (JCPL), and Public Service Electric and Gas (PSE&G) had provided data related to their Pinelands ROW spans which were then placed into a GIS layer showing each individual span. There are 3,059 ROW spans (the distance between two towers) covering some 236 miles. There was little maintenance history available from any of the companies.

Dr. Lathrop and his staff mapped all the vegetation within the ROWs and within a sample of reference habitats elsewhere in the Pinelands. The vegetation was characterized in one of five conditions ranging from full stature trees to grass/herbaceous cover with no or scattered trees and maintenance techniques (prescriptions) were described to achieve the desired goals. The maintenance involved only mechanical methods (mowing, hand cutting and topping trees to the desired height), no use of herbicides.

Dr. Lathrop said that the final draft report includes span-by-span GIS-based data for existing vegetation, existing management techniques, and recommendations for future management. He said that information on threatened and endangered species (T/E) both flora and fauna data had been requested from various sources including local botanists, the NJDEP, US Fish and Wildlife Service and the Pinelands Preservation Alliance. For cases in which T/E species were found within spans or within 1000' of spans, maintenance prescriptions would be modified (e.g., seasonal restrictions) to protect those species.

Dr. Zampella noted that the presence of T/E (but not the individual species) is identified for all spans. He said that the Science Office is scheduled to meet with the utility companies during the third week of January and that, once the final plan is developed, the utilities will be providing management data annually and the Science Office will be monitoring adherence to the ROW plan.

Mr. Stokes said that a pilot program will monitor the effectiveness of the various prescriptions in achieving the desired ecological, reliability, and safety outcomes. Staff would return in about 2 months with a CMP amendment proposing a pilot program.

In response to Commissioner Ashmun's question regarding the implementation of the plan, Mr. Stokes said that the plan will be approved when the Commission authorizes the pilot program amendment but, in the interim, the recommended management techniques could be implemented now and the Permitting Office is prepared to do so during its

review of individual development applications.

Commissioner Kennedy asked Dr. Lathrop if he had any sense of how much of the ROW was on state property. Dr. Lathrop responded that approximately 10% is state land and the rest is private.

In response to Commissioner Lloyd's question as to how many of the spans have been identified as having T/E species, Dr. Procopio said that of the 3,095 ROW spans, 891 spans had T/E species within 1000'.

In response to Commissioner Lee's question about the width of the spans, Dr. Lathrop said that it was quite variable. A discussion ensued as to how 236 miles of ROW spans could convert to 2,732 acres as listed in the slide and Dr. Lathrop said that he would confirm that number. Commissioner Lee asked if, over time, it wouldn't be better to use herbicides or a technique to prevent sprouting once the tree has been cut back rather than mowing. Dr. Zampella said that the project mandated that existing management standards be used. Mr. Stokes said that initially there had been extensive discussion of herbicide use but a determination was made to focus principally on the mechanical means of maintaining the ROWs; some consideration is being given to the use of herbicides on a more selective basis. Dr. Zampella said that the use of herbicides in the Pinelands is a separate question.

#### **4. Continued review of draft forestry rules**

Mr. Stokes said that today the Committee would review in detail the draft forestry rules. He noted the presence of State Forester and Forestry Advisory Committee (FAC) member, Jim Barresi, in the audience as well as other interested parties who had attended the meetings. Mr. Stokes said that, during its deliberations, the FAC recognized that forestry is as much art as it is science and that they believed that their recommendations would serve the Pinelands and the forestry community well.

Mr. Michael Catania, Chairman of the Pinelands FAC, accompanied by Mr. Jon Wagar and Mr. Bob Williams, both consulting foresters, made a PowerPoint presentation (*Attachment B, prepared by Mr. David Kutner who was unable to attend today's meeting*).

Mr. Catania said that when the Committee first met in 2004, there were two inconsistent concerns: the Pinelands is losing its forestry industry vs. forestry is the worse thing that could happen in the Pinelands. He read the introduction to the report and noted the wide representation on the Committee and the active participation by non-members who attended the meetings. He said that ultimately the consensus of the Committee was that its goal was to promote forestry for economic and ecological reasons.

Following the presentation, Mr. Stokes said that he would like to get a sense of the P&I Committee members and, if there were significant policy issues, he would appreciate

knowing about them in advance for discussion at the next P&I meeting (January 30, 2009).

Commissioner Haas complimented the FAC for its good work.

Commissioner Lee said that he also complimented Mr. Catania for persevering with the project and said that the Commission was always appreciative of his knowledge and expertise. He said that his own home is on the site of an 18<sup>th</sup> century sawmill and that he himself was engaged in forestry and he felt that the rules, as written, would not be easy to apply. He suggested that a general policy statement of intent would be helpful. He said that the regulations need to be so clear that everyone can understand the goals. He said that he had asked Mr. Kutner for some data regarding the forestry industry and asked if any were available.

Mr. Williams said that Mr. Kutner had approached him with that question in order to bring his insight into the discussion. He distributed a packet of articles which address the loss of the forestry industry in the Pinelands (*Attachment C*). He noted that there were some 39 sawmills and more than 50 forestry product processors in 1980 while today there are only 4 viable sawmills, one of which will close this winter. There are no pulp mills in the Pinelands. He said that a critical issue is a consistent supply of fiber; a sawmill has to be run on the justification of a supply. Today, there can be no signed contracts based on a guarantee of access to wood because the wood supply is an unknown. Industries will not make a capital commitment without such a guarantee. He emphasized that the critical issue is the *access to the wood*. He noted that Pinelands fiber is of world class quality and expressed disappointment that the thousands of acres of public forest are not being managed properly. He added that the mansion at Batsto is being restored with western red cedar (imported from Washington), not the local Atlantic white cedar. Similarly, why are the state forests selling campground fuel from New York? He said that he believed that the Pinelands Protection Act clearly mandates the protection of forestry and that Pinelands protection is about the forest. He said that one needed to decide what it is that one wants the forest to be as currently forestry is all but dead.

In response to a question from Commissioner Lee regarding the amount of wood harvested, Mr. Williams said that in 1979, roughly 45,000 cords of pine and 35,000 cords of hardwood were harvested annually but the amount of cutting today is miniscule. He said that the real issue for him was the implementation of the recommendations of the FAC.

Mr. Stokes said that if and when the new regulations are adopted, perhaps the FAC could be asked to audit the forestry application review process to determine how implementation is proceeding, identify problematic standards, etc. Mr. Catania said that FAC had volunteered to review private applications and he believed they were still willing to do so.

Commissioner Kennedy suggested that perhaps forestry should be tracked in the Long Term Economic Monitoring program.

Commissioner Ashmun said that she felt the draft rules contained too many terms that were difficult to interpret, e.g., *feasible, practical, around*.

Mr. Catania said that for a number of elements, there are no simple formulas and Mr. Stokes added that it is always difficult to transition from reports containing guidelines and policy recommendations to rules.

Mr. Catania said that when the FAC first convened, the conservation community was opposed to forestry, but now, as land managers, these groups are dramatically more supportive of the role of forestry in land management and stewardship.

In response to questions from Commissioner Lee, Mr. Catania said that the FAC was recommending a 5-year time frame for monitoring and recommending changes to the Plan; that standard #1 “seek to mimic historic patterns” is intended to mean the ecological justification for forestry and the perpetuation of historic forest types (no monoculture and natural rather than artificial regeneration); although realistically the possibility of huge wholesale forestry operations is unlikely, the FAC wanted to limit clearcutting and allow very modest cutting with an acreage limitation..

Commissioner Lee said that a landowner’s perspective is different from that of an FAC member and that he saw forestry as a money pit where there might possibly be a positive return in some 40 to 50 years. Mr. Catania said that as the manager of a 65 acre black walnut tree farm, he understood. There is no market for black walnuts but one has to love what one is doing. The goal of the forestry rules is to provide an additional measure of certainty. He said that now there was discussion of specifics, rather than concepts and that great progress had been made

In response to Acting Chairman Tomasello’s question if endangered species were thriving, Mr. Catania responded that there was the danger of losing habitat. Mr. Stokes added that the Pine Barrens tree frog was now considered threatened rather than endangered.

*Commissioners Ficcaglia and Kennedy left at approximately 12:30 p.m.*

## **5. Briefing on model septic management ordinance**

Mr. Stokes said that the Commission had a contract with Stone Environmental for developing a program for long-term management of septic systems and the Commission would be considering a septic management amendment to the CMP. He said that a basic ordinance had been prepared for the municipalities that will guide the Commission in developing the regulations.

Mr. Wengrowski gave a PowerPoint presentation (*Attachment D*) on the development of a model septic management ordinance. He noted that since its inception, the CMP has required inspection/pump out of septic systems at least once every three years, although this has been completely ineffective and maintenance is at the discretion of the homeowner. The EPA requirements relate pumping requirements to certain sludge

levels in the tank, a determination that is not easily done by a homeowner and one which could lead to over pumping, e.g., the homeowner who hires a technician to open the tank and check the sludge level is likely to request pumping at that time whether or not it is necessary. Mr. Wengrowski said that he was trying to craft an ordinance that would reconcile over-pumping vs. being easily enforceable in order to assist the towns in compliance with NJDEP requirements

Mr. Wengrowski described his outreach program in attempting to interest the counties and municipalities with his efforts. The response has been poor. However the Burlington County Bridge Commission had agreed to meet.

Ms. Grogan noted that the Bridge Commission convenes periodic meetings of all Burlington County mayors to discuss a variety of issues. The last session had been on COAH and was well attended by the municipalities.

Mr. Wengrowski said that he had contacted Mr. Larry Baier with the NJDEP in hopes of securing some funding perhaps to assist a couple of municipalities in completing their inventories. Mr. Wengrowski concluded his presentation noting that he will be working through the spring to develop a model ordinance, meet with the municipalities and draft CMP amendments.

Commissioner Ashmun said that septic management has been accomplished in one NJ municipality through a licensing program. Mr. Wengrowski responded that such an approach was what he was pursuing. He noted that Stone Environmental, the Commission's consultants, have prepared a brochure for homeowners and that the municipalities would be receiving a management manual on CD.

Commissioner Lee said that there was likely to be opposition to a mandatory 3-year maintenance requirement unless there is hard evidence that it is necessary.

## **6. Public Comment**

Dr. Ted Gordon, former Commissioner, commended the Commission for the right-of-way project. He said that the Commission should heed the words of Bob Williams as he was on target regarding the decline of the forestry industry. As to the question of whether T/E species were increasing, he said that either the populations are increasing or are being spotted more often; it was hard to tell which. However, canopy closure is evident throughout the Pinelands; it is important to keep areas open for such plants as the bog asphodel and the swamp pink.

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, noted that he had recently made a trip to the lumbering museum in northern Pennsylvania and was impressed by the similarity between their forestry industry and that of the Pinelands. He expressed concern that he had not hear the terms "sustainability" and "soil compaction" during the presentation and that he was concerned with the compaction that occurs when modern heavy equipment is used. Also, as related to the right-of-way discussion, he had

heard no mention of all-terrain vehicles and their impact. Finally he stated that he always enjoyed listening to Mr. Wengrowski's presentations.

Mr. Carleton Montgomery, Executive Director of the Pinelands Preservation Alliance (PPA), said that PPA has never said that forestry was inappropriate in the Pinelands; it is always a matter of *how* it is conducted. He said that the decline of the industry does not end at the Pinelands boundary and that the issue goes beyond regulation. He said that he believed that the draft rules, with some limited changes, would be an improvement.

Mr. Harry Monesson said that forestry has been a cultural activity in the Pinelands, that wetlands can be utilized as a renewable resource without affecting water quality, that a clustering program discouraged economic development and that the Commission has failed to balance environmental protection with economic development.

## **7. Other Items of Interest**

Mr. Stokes provided an update on five issues:

- ? The filing deadline for COAH housing plans was December 31, 2008 and there had been no response from the Governor's office regarding the request for an extension for Pinelands municipalities. Commissioner Doria has written to the League of Municipalities noting that he was disinclined to grant an extension. There are still discussions in the Legislature. Ms. Grogan will be working on a rule change to help implement the state law and resolve the discrepancies between the CMP and COAH requirements.
- ? Mr. Kutner had sent a memo related to wetlands restoration draft rules requesting that the Committee identify any remaining issues of concern. Mr. Stokes requested that those who wished to offer comment do so prior to January 15 to provide Mr. Kutner time to revise and complete the rule proposal
- ? Staff would like to schedule a special meeting at which the P&I Committee could focus on issues related only to the Management Area changes and Ms. Young would be contacting the Committee members with suggested dates for a mid-February meeting.
- ? The regulatory schedule for the various rules (wetlands restoration, septic management, right-of-way maintenance, etc.) will be presented to the Commission at its January 16, 2009 meeting
- ? Tom Stanuikynas will be leaving the Commission on January 16, 2009, the third Planner to leave within the past year, leaving that office severely short-staffed. Recruitment will be from within as no outside recruitment is possible due to budget constraints.

The meeting adjourned at 1:15 PM (Moved by Commissioner Ashmun and seconded by Commissioner Lloyd).

/CS15A



**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

January 5, 2009 - 9:30 a.m.

**SUMMARY**

The Committee adopted the minutes of the December 1, 2008 meeting.

The Committee recommended Commission certification of documents submitted by Stafford Township

The Committee received presentations on:

- ? Draft forestry rules
- ? Electric transmission right-of-way plan
- ? Model septic management ordinance

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